

whom it is being done, and where and when it is being done. Approval is manifest when the employer is aware of the substitution and indicates approval in whatever manner is customary.

**§ 553.32 Other FLSA exemptions.**

(a) There are other exemptions from the minimum wage and/or overtime requirements of the FLSA which may apply to certain employees of public agencies. The following sections provide a discussion of some of the major exemptions which may be applicable. This list is not comprehensive.

(b) Section 7(k) of the Act provides a partial overtime pay exemption for public agency employees employed in fire protection or law enforcement activities (including security personnel in correctional institutions). In addition, section 13(b)(20) provides a complete overtime pay exemption for any employee of a public agency engaged in fire protection or law enforcement activities, if the public agency employs less than five employees in such activities. (See subpart C of this part.)

(c) Section 13(a)(1) of the Act provides an exemption from both the minimum wage and overtime pay requirements for any employee employed in a bona fide executive, administrative, professional, or outside sales capacity, as these terms are defined and delimited in part 541 of this title. An employee will qualify for exemption if he or she meets all of the pertinent tests relating to duties, responsibilities, and salary.

(d) Section 7(j) of the Act provides that a hospital or residential care establishment may, pursuant to a prior agreement or understanding with an employee or employees, adopt a fixed work period of 14 consecutive days for the purpose of computing overtime pay in lieu of the regular 7-day workweek. Workers employed under section 7(j) must receive not less than one and one-half times their regular rates of pay for all hours worked over 8 in any workday, and over 80 in the 14-day work period. (See § 778.601 of this title.)

(e) Section 13(a)(3) of the Act provides a minimum wage and overtime pay exemption for any employee employed by an amusement or rec-

reational establishment if (1) it does not operate for more than 7 months in any calendar year or (2) during the preceding calendar year, its average receipts for any 6 months of such year were not more than 33⅓ percent of its average receipts for the other 6 months of such year. In order to meet the requirements of section 13(a)(3)(B), the establishment in the previous year must have received at least 75 percent of its income within 6 months. The 6 months, however, need not be 6 consecutive months. State and local governments operate parks and recreational areas to which this exemption may apply.

(f) Section 13(b)(1) of the Act provides an exemption from the overtime pay requirements for "Any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935." (recodified at section 3102, 49 U.S.C.). With regard to State or local governments, this overtime pay exemption may affect mass transit systems engaged in interstate commerce. This exemption is applicable to drivers, driver's helpers, loaders, and mechanics employed by a common carrier whose activities directly affect the safety of operation of motor vehicles in the transportation on the public highways of passengers or property. (See part 782 of this title.)

(g) Section 7(n) of the Act provides that, for the purpose of computing overtime pay, the hours of employment of a mass transit employee do not include the time spent in charter activities if (1) pursuant to a prior agreement the time is not to be so counted, and (2) such charter activities are not a part of the employee's regular employment.

(h) Additional overtime pay exemptions which may apply to employees of public agencies are contained in sections 13(b)(2) (employees of certain common carriers by rail), 13(b)(9) (certain employees of small market radio and television stations), and section 13(b)(12) (employees in agriculture) of the Act. Further, section 13(a)(6) of the Act provides a minimum wage and

## **§ 553.50**

overtime pay exemption for agricultural employees who work on small farms. (See part 780 of this title.)

### **RECORDKEEPING**

#### **§ 553.50 Records to be kept of compensatory time.**

For each employee subject to the compensatory time and compensatory time off provisions of section 7(o) of the Act, a public agency which is a State, a political subdivision of a State or an interstate governmental agency shall maintain and preserve records containing the basic information and data required by § 516.2 of this title and, in addition:

- (a) The number of hours of compensatory time earned pursuant to section 7(o) each workweek, or other applicable work period, by each employee at the rate of one and one-half hour for each overtime hour worked;
- (b) The number of hours of such compensatory time used each workweek, or other applicable work period, by each employee;
- (c) The number of hours of compensatory time compensated in cash, the total amount paid and the date of such payment; and
- (d) Any collective bargaining agreement or written understanding or agreement with respect to earning and using compensatory time off. If such agreement or understanding is not in writing, a record of its existence must be kept.

#### **§ 553.51 Records to be kept for employees paid pursuant to section 7(k).**

For each employee subject to the partial overtime exemption in section 7(k) of the Act, a public agency which is a State, a political subdivision of a State, or an interstate governmental agency shall maintain and preserve records containing the information and data required by § 553.50 and, in addition, make some notation on the payroll records which shows the work period for each employee and which indicates the length of that period and its starting time. If all the workers (or groups of workers) have a work period of the same length beginning at the same time on the same day, a single notation of the time of day and begin-

## **29 CFR Ch. V (7-1-06 Edition)**

ning day of the work period will suffice for these workers.

### **Subpart B—Volunteers**

#### **§ 553.100 General.**

Section 3(e) of the Fair Labor Standards Act, as amended in 1985, provides that individuals performing volunteer services for units of State and local governments will not be regarded as “employees” under the statute. The purpose of this subpart is to define the circumstances under which individuals may perform hours of volunteer service for units of State and local governments without being considered to be their employees during such hours for purposes of the FLSA.

#### **§ 553.101 “Volunteer” defined.**

(a) An individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered, is considered to be a volunteer during such hours. Individuals performing hours of service for such a public agency will be considered volunteers for the time so spent and not subject to sections 6, 7, and 11 of the FLSA when such hours of service are performed in accord with sections 3(e)(4)(A) and (B) of the FLSA and the guidelines in this subpart.

(b) Congress did not intend to discourage or impede volunteer activities undertaken for civic, charitable, or humanitarian purposes, but expressed its wish to prevent any manipulation or abuse of minimum wage or overtime requirements through coercion or undue pressure upon individuals to “volunteer” their services.

(c) Individuals shall be considered volunteers only where their services are offered freely and without pressure or coercion, direct or implied, from an employer.

(d) An individual shall not be considered a volunteer if the individual is otherwise employed by the same public agency to perform the same type of services as those for which the individual proposes to volunteer.